

ASSEMBLY BILL

No. 687

Introduced by Assembly Member Roger Hernández

February 21, 2013

An act to amend Section 365.1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 687, as introduced, Roger Hernández. Electricity.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers other than community choice aggregators, as defined, to acquire service from certain electricity suppliers, after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law. The act requires the commission to allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation's distribution service territory up to a specified maximum allowable total kilowatthours annual limit. The act requires the commission to undertake specified actions when authorizing additional direct transactions for retail nonresidential end-use customers.

This bill would additionally require the commission to provide the highest priority to acquire electric services from other providers to entities treating and remediating groundwater that a federal, state, or local agency identifies as contaminated on a site listed as a Superfund site by the United States Environmental Protection Agency when

authorizing additional direct transactions for retail nonresidential end-use customers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 365.1 of the Public Utilities Code is
2 amended to read:

3 365.1. (a) Except as expressly authorized by this section, and
4 subject to the limitations in subdivisions (b) and (c), the right of
5 retail end-use customers pursuant to this chapter to acquire service
6 from other providers is suspended until the Legislature, by statute,
7 lifts the suspension or otherwise authorizes direct transactions. For
8 purposes of this section, “other provider” means any person,
9 corporation, or other entity that is authorized to provide electric
10 service within the service territory of an electrical corporation
11 pursuant to this chapter, and includes an aggregator, broker, or
12 marketer, as defined in Section 331, and an electric service
13 provider, as defined in Section 218.3. “Other provider” does not
14 include a community choice aggregator, as defined in Section
15 331.1, and the limitations in this section do not apply to the sale
16 of electricity by “other providers” to a community choice
17 aggregator for resale to community choice aggregation electricity
18 consumers pursuant to Section 366.2.

19 (b) The commission shall allow individual retail nonresidential
20 end-use customers to acquire electric service from other providers
21 in each electrical corporation’s distribution service territory, up to
22 a maximum allowable total kilowatthours annual limit. The
23 maximum allowable annual limit shall be established by the
24 commission for each electrical corporation at the maximum total
25 kilowatthours supplied by all other providers to distribution
26 customers of that electrical corporation during any sequential
27 12-month period between April 1, 1998, and the effective date of
28 this section. Within six months of the effective date of this section,
29 or by July 1, 2010, whichever is sooner, the commission shall
30 adopt and implement a reopening schedule that commences
31 immediately and will phase in the allowable amount of increased
32 kilowatthours over a period of not less than three years, and not
33 more than five years, raising the allowable limit of kilowatthours

supplied by other providers in each electrical corporation's distribution service territory from the number of kilowatthours provided by other providers as of the effective date of this section, to the maximum allowable annual limit for that electrical corporation's distribution service territory. The commission shall review and, if appropriate, modify its currently effective rules governing direct transactions, but that review shall not delay the start of the phase-in schedule.

(c) Once the commission has authorized additional direct transactions pursuant to subdivision (b), it shall do ~~both~~ *all* of the following:

(1) Ensure that other providers are subject to the same requirements that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewables portfolio standard provisions of Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior decision of the commission to the contrary.

(2) (A) Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission, to all of the following:

- (i) Bundled service customers of the electrical corporation.
 - (ii) Customers that purchase electricity through a direct transaction with other providers.
 - (iii) Customers of community choice aggregators.
- (B) If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of

1 the electrical corporation. The commission shall allocate the costs
2 of those generation resources to ratepayers in a manner that is fair
3 and equitable to all customers, whether they receive electric service
4 from the electrical corporation, a community choice aggregator,
5 or an electric service provider.

6 (C) The resource adequacy benefits of generation resources
7 acquired by an electrical corporation pursuant to subparagraph (A)
8 shall be allocated to all customers who pay their net capacity costs.
9 Net capacity costs shall be determined by subtracting the energy
10 and ancillary services value of the resource from the total costs
11 paid by the electrical corporation pursuant to a contract with a
12 third party or the annual revenue requirement for the resource if
13 the electrical corporation directly owns the resource. An energy
14 auction shall not be required as a condition for applying this
15 allocation, but may be allowed as a means to establish the energy
16 and ancillary services value of the resource for purposes of
17 determining the net costs of capacity to be recovered from
18 customers pursuant to this paragraph, and the allocation of the net
19 capacity costs of contracts with third parties shall be allowed for
20 the terms of those contracts.

21 (D) It is the intent of the Legislature, in enacting this paragraph,
22 to provide additional guidance to the commission with respect to
23 the implementation of subdivision (g) of Section 380, as well as
24 to ensure that the customers to whom the net costs and benefits of
25 capacity are allocated are not required to pay for the cost of
26 electricity they do not consume.

27 *(3) Ensure that entities that are currently treating and*
28 *remediating groundwater that federal, state, or local agency*
29 *previously identified as contaminated at a site that is listed by the*
30 *United States Environmental Protection Agency on the National*
31 *Priorities List pursuant to the Comprehensive Environmental*
32 *Response, Compensation, and Liability Act of 1980 (42 U.S.C.*
33 *Sec. 9601 et seq.) have the highest priority in acquiring electric*
34 *service by direct transactions.*

35 (d) (1) If the commission approves a centralized resource
36 adequacy mechanism pursuant to subdivisions (h) and (i) of Section
37 380, upon the implementation of the centralized resource adequacy
38 mechanism the requirements of paragraph (2) of subdivision (c)
39 shall be suspended. If the commission later orders that electrical
40 corporations cease procuring capacity through a centralized

1 resource adequacy mechanism, the requirements of paragraph (2)
2 of subdivision (c) shall again apply.

3 (2) If the use of a centralized resource adequacy mechanism is
4 authorized by the commission and has been implemented as set
5 forth in paragraph (1), the net capacity costs of generation resources
6 that the commission determines are required to meet urgent system
7 or urgent local grid reliability needs, and that the commission
8 authorizes to be procured outside of the Section 380 or Section
9 454.5 processes, shall be recovered according to the provisions of
10 paragraph (2) of subdivision (c).

11 (3) ~~Nothing in this~~ *This subdivision supplants does not supplant*
12 the resource adequacy requirements of Section 380 or the resource
13 procurement procedures established in Section 454.5.

14 (e) The commission may report to the Legislature on the efficacy
15 of authorizing individual retail end-use residential customers to
16 enter into direct transactions, including appropriate consumer
17 protections.